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6 UNITED STATES DISTRICT COURT  
7 WESTERN DISTRICT OF WASHINGTON  
8 AT SEATTLE

9 SHERIDAN ROBIN NELSON,

10 Plaintiff,

11 v.

12 PORT OF SEATTLE, *et al.*,

13 Defendants.  
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Case No. C06-1578RSL

ORDER GRANTING MOTION TO  
AMEND AND TO REMAND

16  
17 **I. INTRODUCTION**

18 This matter comes before the Court on a motion filed by plaintiff Sheridan Robin  
19 Nelson to amend her complaint to dismiss her federal law claim under 42 U.S.C. § 1983  
20 with prejudice. (Dkt. #7). Plaintiff also requests that the Court decline to exercise  
21 supplemental jurisdiction over her remaining state law claims and remand this matter to  
22 state court.

23 For the reasons set forth below, the Court grants the motion to amend and to  
24 remand.

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26 ORDER GRANTING MOTION  
TO AMEND AND TO REMAND - 1

## II. DISCUSSION

Plaintiff, a former employee of the Port of Seattle (the “Port”), filed her complaint in King County Superior Court on September 25, 2006 against the Port and two individual Port employees. The complaint included a claim under 42 U.S.C. § 1983, discrimination and retaliatory discharge claims under the Washington Law Against Discrimination, RCW 49.60 *et seq.*, and a claim for wrongful discharge in violation of public policy. Defendants removed the case to this Court on November 1, 2006 based on federal question jurisdiction.

### A. Leave to Amend.

Leave to amend “shall be freely given when justice so requires.” Fed. R. Civ. P. 15(a). The Court considers four factors in deciding whether to grant leave to amend: “bad faith, undue delay, prejudice to the opposing party, and the futility of amendment.” Kaplan v. Rose, 49 F.3d 1363, 1370 (9th Cir. 1994). A proposed amendment is futile if it could be defeated by a motion to dismiss or if plaintiff cannot prevail on the merits. See, e.g., Smith v. Commanding Officer, 555 F.2d 234, 235 (9th Cir. 1977).

In this case, defendants argue that the amendment would be futile because plaintiff’s claims against the individual defendants are time barred. Even if that were true, it would not support a finding of futility. The proposed amended complaint only deletes the Section 1983 claim; it does not seek to add futile claims. The original complaint contains identical claims against the individual defendants, so if the Court denies the amendment, those claims remain. Moreover, the Court denies defendants’ request, contained in their opposition to plaintiff’s motion, to dismiss the claims against the individual defendants. Defendants have not moved for that relief as required by the Local Rules. The Court finds no evidence of bad faith or undue delay, or that the

1 proposed amendment would prejudice defendants. Accordingly, plaintiff's motion to  
2 amend her complaint to delete her Section 1983 claim is granted.

3 **B. Remand and Costs.**

4 Now that plaintiff has deleted her only federal claim and the parties do not allege  
5 diversity, the Court must determine whether to retain supplemental jurisdiction over  
6 plaintiff's remaining state law claims. 28 U.S.C. § 1367(c)(3). In exercising its  
7 discretion, the Court must consider whether declining jurisdiction over the supplemental  
8 claims will comport with "the values of judicial economy, convenience, fairness, and  
9 comity." Carnegie-Mellon Univ. v. Cohill, 484 U.S. 343, 350 (1988); Executive  
10 Software N. Am. v. U.S. Dist. Court, 24 F.3d 1545, 1554 (9th Cir. 1994). When all  
11 claims for which a federal court possessed original jurisdiction are eliminated, "the  
12 balance of factors will weigh toward remanding any remaining pendent state claims to  
13 state court." Harrell v. 20th Century Ins. Co., 934 F.2d 203, 205 (9th Cir. 1991). In  
14 contrast, a district court may properly retain jurisdiction over state law claims where  
15 "substantial judicial resources have been committed and remanding would cause a  
16 duplication of efforts." Johnson v. City of Seattle, 385 F. Supp. 2d 1091, 1100 (W.D.  
17 Wash. 2005).

18 In this case, the federal claim has been eliminated at an early stage, and the Court  
19 has not expended substantial resources adjudicating this case. Instead, only scheduling  
20 orders have been issued. Although the parties have engaged in some limited discovery,  
21 fact finding, and legal research, those efforts will not require duplication. Defendants  
22 argue that they have spent time complying with federal requirements, like conferring  
23 pursuant to Rule 26(f), but that time has not been wasted. Defendants also contend that  
24 this Court has established a more expeditious case schedule than the one they had in state  
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1 court. Defendants, however, can move the state court for an earlier trial date or file  
2 dispositive motions. The comity factor also weighs in favor of remand. Resolution of  
3 plaintiff's public policy claim turns on the existence of a clear mandate of public policy.  
4 There are good policy reasons for allowing the state courts to decide the issue rather than  
5 a federal district court or the Ninth Circuit Court of Appeals reviewing this Court's  
6 decision.

7 The Court also considers whether plaintiff has "engaged in any manipulative  
8 tactics" in order to return to state court. Carnegie-Mellon Univ., 484 U.S. at 357. There  
9 is no evidence that plaintiff asserted the federal claim in bad faith or to manipulate  
10 defendants into expending resources removing. Rather, she has apparently reconsidered  
11 her First Amendment claim in light of recent decisions. See Garcetti v. Ceballos, 126 S.  
12 Ct. 1951 (2006). Plaintiff's decision was also prompted in part by her waiver of her jury  
13 demand in federal court. That fact reflects some evidence of forum manipulation, and  
14 plaintiff has wasted judicial resources by deciding to delete her federal claim only after  
15 removal. Although that factor weighs in favor of retaining the state law claims, the other  
16 factors weigh more heavily against it. Accordingly, the Court declines to exercise  
17 supplemental jurisdiction over plaintiff's remaining state law claims.

18 Defendants request an award of fees and costs for preparing and filing the notice  
19 of removal. It is unclear whether 28 U.S.C. § 1447(c) authorizes such an award where, as  
20 here, the removal was proper. Even if an award is authorized, it is not warranted under  
21 these circumstances. See, e.g., Baddie v. Berkeley Farms, 64 F.3d 487, 491 (9th Cir.  
22 1995) (explaining that a plaintiff may choose a state court forum over her federal claim  
23 without sanctions). Furthermore, an award of costs is not warranted under Federal Rule  
24 of Civil Procedure 15. Defendants cite General Signal Corp. v. MCI Telecomm. Corp.,

1 66 F.3d 1500, 1514 (9th Cir. 1995), which explained that a court may impose sanctions  
2 pursuant to Rule 15 “to compensate the opposing party for additional costs incurred  
3 because the original pleading was faulty.” In this case, neither the original complaint nor  
4 the proposed amended complaint was faulty. Accordingly, the Court will not impose fees  
5 and costs.

### 6 **III. CONCLUSION**

7 For all of the foregoing reasons, the Court GRANTS plaintiff’s motion to amend  
8 and to remand (Dkt. #7). This case is REMANDED to King County Superior Court. The  
9 Clerk of the Court is directed to transmit a copy of the file to King County Superior  
10 Court.

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12 DATED this 5th day of March, 2007.

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15 Robert S. Lasnik  
16 United States District Judge  
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